

COPY

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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In The Matter of Charges and

Complaint Against

DIPAK KANTILAL DESAI, M.D.,

Respondent.

Case No. 08-6001-1
NO.

FILED 25 April 2008


EXECUTIVE DIRECTOR

COMPLAINT

The Investigative Committee of the Board of Medical Examiners of the state of Nevada, composed of Charles N. Held, M.D., Chairman, Cindy Lamerson, M.D. Member, and Jean Stoess, M.A., Member, by and through Lyn E. Beggs, Deputy General Counsel for the Nevada State Board of Medical Examiners, having a reasonable basis to believe that Dipak Kantilal Desai, M.D., hereinafter referred to as "Respondent," has violated the provisions of NRS Chapter 630, hereby issues its formal Complaint, stating the Investigative Committee's charges and allegations, as follows:

1. Respondent is currently licensed in active status, and was so licensed by the Nevada State Board of Medical Examiners, hereinafter referred to as "the Board," pursuant to the provisions of Chapter 630 of the Nevada Revised Statutes, at the time of the incidents in question.

2. Respondent is the principle owner of the Endoscopy Center of Southern Nevada, LLC, hereinafter referred to as "ECSN," located at 700 Shadow Lane in Las Vegas, Nevada, and was the principle owner at the time of the incidents in question.

3. Patient A was a sixty-seven-year-old male at the time of the matter in question. His true identity is not disclosed to protect his privacy, but his identity is disclosed in the Patient Designation served on Respondent along with a copy of this Complaint.

4. On July 25, 2007, Patient A underwent a colonoscopy at ECSN, which was performed by Respondent.

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1 5. Subsequent to the procedure, Patient A tested positive for hepatitis C, although prior to
2 the colonoscopy patient A was not known to have hepatitis C.

3 6. Due to unsafe practices and policies at ECSN, Patient A contracted hepatitis C while at
4 ECSN for his colonoscopy.

5 7. Respondent knew, or should have known, of the unsafe practices and policies at ECSN,
6 both as a physician at, and principle owner of, ECSN, which placed Patient A's health and safety at risk.

7 8. Patient B was a thirty-seven-year-old female at the time of the matter in question. Her
8 true identity is not disclosed to protect her privacy, but her identity is disclosed in the Patient
9 Designation served on Respondent along with a copy of this Complaint.

10 9. On September 21, 2007, Patient B underwent a colonoscopy at ECSN, which was
11 performed by Respondent.

12 10. Subsequent to the procedure, Patient B tested positive for hepatitis C, although prior to
13 the colonoscopy Patient B was not known to have hepatitis C.

14 11. Due to unsafe practices and policies at ECSN, Patient B contracted hepatitis C while at
15 ECSN for her colonoscopy.

16 12. Respondent knew, or should have known, of the unsafe practices and policies at ECSN,
17 both as a physician at, and principle owner of, ECSN, which placed Patient B's health and safety at risk.

18 13. Patient C was a seventy-two-year-old male at the time of the matter in question. His true
19 identity is not disclosed to protect his privacy, but his identity is disclosed in the Patient Designation
20 served on Respondent along with a copy of this Complaint.

21 14. On September 21, 2007, Patient C underwent a colonoscopy at ECSN, which was
22 performed by Respondent.

23 15. Subsequent to the procedure, Patient C tested positive for hepatitis C, although prior to
24 the colonoscopy Patient C was not known to have hepatitis C.

25 16. Due to unsafe practices and policies at ECSN, Patient C contracted hepatitis C while at
26 ECSN for his colonoscopy.

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17. Respondent knew, or should have known, of the unsafe practices and policies at ECSN, both as a physician at, and principle owner of, the ECSN, which placed Patient C's health and safety at risk.

Count I

18. Nevada Administrative Code Section 630.040 defines malpractice as the failure of a physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances.

19. Nevada Revised Statutes Section 630.301(4) provides that malpractice is grounds for initiating disciplinary action against a physician.

20. Respondent failed to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances when he performed a colonoscopy on Patient A, knowing, or being in a position to have known, that the unsafe practices and policies at ECSN could put Patient A's health and safety at risk, constituting a violation of Nevada Revised Statutes Section 630.301(4).

21. By reason of the foregoing, Respondent is subject to discipline by the Nevada State Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes.

Count II

22. Nevada Revised Statutes Section 630.301(7) provides that engaging in conduct that violates the trust of a patient and exploits the relationship between the physician and patient for financial gain is grounds for initiating disciplinary action.

23. Respondent violated the trust of Patient A and exploited the physician-patient relationship for financial gain when he performed a colonoscopy on Patient A at a facility in which he had a financial interest, knowing, or being in a position that he should have known, of the unsafe practices at the facility that could put the health and safety of Patient A at risk, constituting a violation of Nevada Revised Statutes Section 630.301(7).

24. By reason of the foregoing, Respondent is subject to discipline by the Nevada State Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes.

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1 Count III

2 25. Nevada Revised Statutes Section 630.301(9) provides that engaging in conduct that
3 brings the medical profession into disrepute is grounds of initiating discipline.

4 26. Respondent brought the medical profession into disrepute when he engaged in conduct
5 as outlined above which placed Patient A's health and safety at risk, thus violating Nevada Revised
6 Statutes Section 630.301(9).

7 27. By reason of the foregoing, Respondent is subject to discipline by the Nevada State
8 Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes.

9 Count IV

10 28. Nevada Administrative Code Section 630.040 defines malpractice as the failure of a
11 physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under
12 similar circumstances.

13 29. Nevada Revised Statutes Section 630.301(4) provides that malpractice is grounds for
14 initiating disciplinary action against a physician.

15 30. Respondent failed to use the reasonable care, skill, or knowledge ordinarily used under
16 similar circumstances when he performed a colonoscopy on Patient B, knowing, or being in a position
17 to have known, that the unsafe practices and policies at ECSN could put Patient B's health and safety at
18 risk, constituting a violation of Nevada Revised Statutes Section 630.301(4).

19 31. By reason of the foregoing, Respondent is subject to discipline by the Nevada State
20 Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes.

21 Count V

22 32. Nevada Revised Statutes Section 630.301(7) provides that engaging in conduct that
23 violates the trust of a patient and exploits the relationship between the physician and patient for
24 financial gain is grounds for initiating disciplinary action.

25 33. Respondent violated the trust of Patient B and exploited the physician-patient
26 relationship for financial gain when he performed a colonoscopy on Patient B at a facility in which he
27 had a financial interest, knowing, or being in a position that he should have known, of the unsafe

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1 practices at the facility that could put the health and safety of Patient B at risk, constituting a violation
2 of Nevada Revised Statutes Section 630.301(7).

3 34. By reason of the foregoing, Respondent is subject to discipline by the Nevada State
4 Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes.

5 **Count VI**

6 35. Nevada Revised Statutes Section 630.301(9) provides that engaging in conduct that
7 brings the medical profession into disrepute is grounds of initiating discipline.

8 36. Respondent brought the medical profession into disrepute when he engaged in conduct
9 as outlined above which placed Patient B's health and safety at risk, thus violating Nevada Revised
10 Statutes Section 630.301(9).

11 37. By reason of the foregoing, Respondent is subject to discipline by the Nevada State
12 Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes.

13 **Count VII**

14 38. Nevada Administrative Code Section 630.040 defines malpractice as the failure of a
15 physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under
16 similar circumstances.

17 39. Nevada Revised Statutes Section 630.301(4) provides that malpractice is grounds for
18 initiating disciplinary action against a physician.

19 40. Respondent failed to use the reasonable care, skill, or knowledge ordinarily used under
20 similar circumstances when he performed a colonoscopy on Patient C, knowing, or being in a position
21 to have known, that the unsafe practices and policies at ECSN could put Patient C's health and safety at
22 risk, constituting a violation of Nevada Revised Statutes Section 630.301(4).

23 41. By reason of the foregoing, Respondent is subject to discipline by the Nevada State
24 Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes

25 **Count VIII**

26 42. Nevada Revised Statutes Section 630.301(7) provides that engaging in conduct that
27 violates the trust of a patient and exploits the relationship between the physician and patient for
28 financial gain is grounds for initiating disciplinary action.

1 43. Respondent violated the trust of Patient C and exploited the physician-patient
2 relationship for financial gain when he performed a colonoscopy on Patient C at a facility in which he
3 had a financial interest, knowing, or being in a position that he should have known, of the unsafe
4 practices at the facility that could put the health and safety of Patient C at risk, constituting a violation
5 of Nevada Revised Statutes Section 630.301(7).

6 44. By reason of the foregoing, Respondent is subject to discipline by the Nevada State
7 Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes.

8 **Count IX**

9 45. Nevada Revised Statutes Section 630.301(9) provides that engaging in conduct that
10 brings the medical profession into disrepute is grounds of initiating discipline.

11 46. Respondent brought the medical profession into disrepute when he engaged in conduct
12 as outlined above which placed Patient C's health and safety at risk, thus violating Nevada Revised
13 Statutes Section 630.301(9).

14 47. By reason of the foregoing, Respondent is subject to discipline by the Nevada State
15 Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes.

16 **Count X**

17 48. Nevada Revised Statutes Section 630.306(7) provides that the continual failure to
18 exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by
19 physicians in good standing practicing in the same specialty or field is grounds for initiating discipline.

20 49. Respondent failed to exercise the skill or diligence or use the methods ordinarily
21 exercised under the same circumstances by physicians in good standing practicing in the same specialty
22 or field when he, by his conduct outlined above, put the health and safety of Patients A, B and C at risk,
23 as evidenced by all three patients contracting hepatitis C.

24 50. By reason of the foregoing, Respondent is subject to discipline by the Nevada State
25 Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes.

26 **WHEREFORE**, the Investigative Committee prays:

27 1. That the Nevada State Board of Medical Examiners fix a time and place for a formal
28 hearing;

1 2. That the Nevada State Board of Medical Examiners give Respondent notice of the
2 charges herein against him, the time and place set for the hearing, and the possible sanctions against
3 him;

4 3. That the Nevada State Board of Medical Examiners determine what sanctions it
5 determines to impose for the violation or violations committed by Respondent;

6 4. That the Nevada State Board of Medical Examiners make, issue and serve on
7 Respondent its findings of facts, conclusions of law and order, in writing, that includes the sanctions
8 imposed; and

9 5. That the Nevada State Board of Medical Examiners take such other and further action as
10 may be just and proper in these premises.

11 DATED this 25th day of April, 2008.

12 INVESTIGATIVE COMMITTEE OF
13 THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

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15 By: _____

16 Lyn E. Beggs

17 Attorney for the Investigative Committee of the Nevada
18 State Board of Medical Examiners
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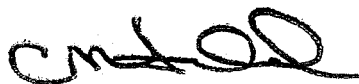
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VERIFICATION

STATE OF NEVADA)
 : ss.
COUNTY OF DOUGLAS)

CHARLES N. HELD, M.D., having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the complaint against the Respondent herein; that he has read the foregoing Complaint; and that based upon information discovered in the course of the investigation into a complaint against Respondent, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate, and correct.

DATED this 25th day of April, 2008.



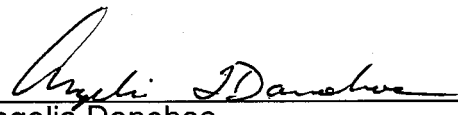
CHARLES N. HELD, M.D.

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am employed by Nevada State Board of Medical Examiners and
3 that on the 25th day of April 2008, I served a file copy of the COMPLAINT, PATIENT
4 DESIGNATION, NOTICE OF PRE-HEARING CONFERENCE & HEARING, along with copy
5 of appointment letter, by mailing via FED-EX Priority Overnight to the following:

6 Dipak Desai, M.D.
7 3093 Red Arrow Dr.
8 Las Vegas, NV 89135

9 Dated this 25th day of April 2008.

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12 Angelia Donohoe
13 Legal Assistant
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